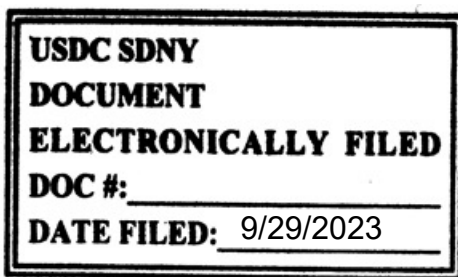


September 28, 2023



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VIA ECF

The Honorable Robert W. Lehrburger
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Hedgeye Risk Management, LLC v. Dale, et al.*, No. 1:21-cv-3687 (ALC) (RWL)

Dear Judge Lehrburger:

This firm represents Hedgeye Risk Management, LLC (“Hedgeye”) in the present case. We write seeking an order compelling Defendant Nadine Terman to appear in person for her upcoming deposition on behalf of third-party Longbow Trade Signals LLC (“Longbow”). The deposition is currently scheduled for October 4, 2023, beginning at 9:00 a.m. PT. Ms. Terman is represented in this action by Press Koral LLP. Longbow is represented by Shapiro Arato Bach LLP, the same firm representing the Dale Defendants in this action. Hedgeye has offered multiple alternatives to facilitate this in-person deposition, including paying Ms. Terman’s travel expenses to New York (up to \$2,000), paying New York counsel’s travel expenses to San Francisco (up to \$2,000), where Ms. Terman is located, or moving the deposition to a different date to accommodate an in-person deposition. Counsel for Ms. Terman, the Dale Defendants and Longbow have rejected all of these options.

On July 5, 2023, this Court ordered a three hour deposition of Longbow on a narrowed set of topics. Dkt. 584. The Court stated that the deposition “may be conducted remotely,” but did not preclude the deposition from occurring in person. *Id.* at 5. By contrast, this Court separately ordered with respect to defendant Steven Lamar that “Lamar may select at his option whether to proceed by written questions or, instead, a one-hour video deposition.” *Id.* at 10. We understand therefore that it was the Court’s intention that Hedgeye could decide whether to take the Longbow deposition remotely or in person.

On September 7, 2023, Venable issued a subpoena to Longbow for a remote deposition.

On September 14, 2023, I conducted Mr. Lamar’s one-hour video deposition. Unfortunately, Venable experienced an officewide network outage during the deposition that disrupted and delayed it. (A vendor’s firewall software incorrectly believed the network was experiencing a DoS attack and shut down all traffic.) In writing to us about Ms. Terman’s upcoming deposition, Longbow’s counsel chastised us, stating that “[w]e also suggest that you

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ensure your wifi and exhibit presentation software are working in advance, or that you have a viable back up.”

We have taken counsel’s suggestion to heart, and decided that in order to ensure that there are no technology issues or disruptions on our end, we will take Ms. Terman’s deposition in person. This decision was also made to help facilitate Ms. Terman’s request to end the deposition by 12:30 p.m. PT on October 4.

While the original Longbow subpoena indicated that the deposition would be taken remotely, that was before we experienced technical difficulties in taking Mr. Lamar’s remote deposition, and before counsel admonished us for those technical difficulties. We thereafter issued another subpoena specifically to Ms. Terman, on behalf of Longbow, at Venable’s San Francisco office.

Again, we have offered to hold that deposition at Venable’s offices in San Francisco, where Ms. Terman is located, or at Venable’s offices in New York, where counsel for the Dale Defendants/Longbow and Ms. Terman are located, to pay reasonable travel expenses for counsel or the witness, and to reschedule the deposition to another date if that would work better for the witness and her counsel.

In sum, Hedgeye would like to take Ms. Terman’s deposition in person, as permitted by the Court, and Hedgeye has offered multiple options to overcome any inconvenience to the witness or her counsel. We respectfully request that the Court issue an order compelling Defendant Nadine Terman to appear in person for her upcoming deposition on behalf of Longbow, at her option either at Venable’s offices in San Francisco or Venable’s offices in New York, reasonable travel expenses (up to \$2,000) to be borne by Hedgeye.

Respectfully submitted,

/s/ Jessie F. Beeber

Jessie F. Beeber

cc: All counsel via ECF

The Terman deposition shall proceed remotely as scheduled for October 4, 2023. The Court agrees with Venable that Longbow’s chastising for an unexpected network outage was not particularly helpful. But changing the logistics at this date is not practical or warranted.

SO ORDERED:

9/29/2023

HON. ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE